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June 17, 2003

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Federal Communications Commission  
Office of Secretary

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

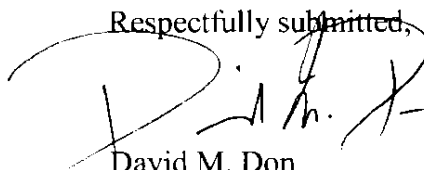
Re: Ex Parte Presentation, Applications for Transfer of Control of Hispanic Broadcasting Corp., and Certain Subsidiaries, Licensees of KGBT (AM, Harlingen, Texas et al. (Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, et al.)

Dear Ms. Dortch:

Phil Verveer, Bruce Eisen, Mark Popofsky, and I, on behalf of Spanish Broadcasting System, Inc. ("SBS"), met today with Dan Gonzalez, Senior Legal Advisor to Commissioner Martin and Catherine Crutcher Bohigian, Legal Advisor on Media Issues to Commissioner Martin. We discussed the proposed merger between Univision and Hispanic Broadcasting Corp. and SBS's recent submissions in the above-captioned docket, including the concentration of Spanish-language broadcasting that would result if the Commission approved the merger. We also discussed the unique role language plays in society and culture and the impact that the proposed merger would have on the availability of diverse Spanish-language media to Hispanic Americans. In addition, the attached materials were used in our presentation to show numerous decisions where the Commission recognized the special status of Spanish and other minority languages.

In accordance with the Commission's rules, I am submitting two copies of this letter.

Respectfully submitted,



David M. Don  
Counsel for Spanish Broadcasting System, Inc.

Attachment

cc: Dan Gonzalez  
Catherine Crutcher Bohigian  
Scott R. Flick, Counsel for Univision Communications, Inc.  
Roy R. Russo, Counsel for Hispanic Broadcasting Corp.  
Harry F. Cole, Counsel for Elgin FM Limited Partnership

## FCC Decisions Recognizing Special Status of Spanish-Language Broadcasting

### **Numerous FCC Decisions Recognize The Special Status Of Spanish And Other Minority Languages.**

#### 1. Waiver Of The Multiple Ownership Rules

- *Telemundo Communications, Inc. (Transferor) and TN Acquisition Corp. (Transferee)*, 17 FCC Rcd 6958 (2002)

-granting a 12-month waiver of the TV duopoly rule for common ownership of three TV stations in the Los Angeles market because (1) Spanish-language broadcast stations serve a separate audience, or “market,” for diversity purposes, and (2) Spanish-language broadcast stations do not compete directly with English-language stations, and therefore are effectively a separate product market.

#### 2. Cable Distant Signal Carriage Rules

- *Amendment of Part 74, Subpart K of the Commission's Rules and Regulations Relative to Community Antenna Television Systems, et seq., Cable Television Report and Order*, 36 FCC 2d 143, ¶ 96 (1972).

-allowing cable systems to carry distant foreign-language stations without counting such stations against their quota of distant non-network stations. This action was justified in the FCC's view because foreign-language stations “fulfill an important need for what generally is an audience limited in number,” and thus the importation of such distant signals would not generally threaten local broadcast service.

- *Amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations Relative to Adding a New Definition for “Specialty Station” and “Specialty Format Programming” and Amending the Appropriate Signal Carriage Rules, First Report and Order*, 58 FCC 2d 442, ¶24 (1976).

-In affirming its treatment of foreign-language stations, the FCC determined that “[w]hat we seek to isolate in the instant proceeding is programming which, by virtue of its nature or its content, is not of general interest to the average viewer. To subscribe to SICC's argument we must hold that the average television viewer would find a film, news program, or sporting event of equal interest regardless of whether it is presented in English or Spanish. Suffice it to say we cannot so decide: a program broadcast in a foreign language is of little interest to any but those fluent in the language.”

#### 3. Must Carry Rules

- *Tele-Media Co.*, 10 FCC Rcd 8615, ¶ 14 (CSB 1995).

-acknowledging policy distinctions for foreign-language broadcasters in the context of modifications of DMAs for the purpose of the must carry rules. Beginning at least in 1995, and continuing to the present, the FCC has taken into account the relatively more

limited audience of a foreign-language broadcast station in the context of determining a station's "historical viewing" for purpose of modifying the cable carriage rights of such stations. In 1995 the Cable Services Bureau stated that "[w]e have previously recognized that Spanish-language stations . . . are capable of offering desirable diversity of programming, yet typically attract limited audiences. We continue to believe. . . that the fact that such stations attract limited audiences must be taken into account in determining the equities concerning such stations' rights to cable carriage."

- The Media Bureau has repeatedly followed this analysis. See e.g., *Norwell Television, LLC*, 17 FCC Rcd 16085, ¶13 (MB Aug. 20, 2002); *Coxcom, Inc.*, 17 FCC Rcd 17192, ¶¶8, 12 (MB Sept. 18, 2002); *Dominion Broadcasting, Inc.*, 18 FCC Rcd 2882, ¶10 (MB Feb. 26, 2003); *Comcast Cablevision of Danbury*, DA 03-94, 2003 FCC LEXIS 174, ¶8 (MB Jan. 15, 2003).

#### 4. Permanent Waiver Of The National Spot Sales Rules For Spanish-Language Broadcasters

- *Amendment of Section 73.658(i) of the Commission's Rules*, 5 FCC Rcd 7280, ¶12 (1990).

-stating that in the absence of the prior temporary waiver (originally granted in 1978 to Univision), the development of new foreign-language programming services would have been hampered, and that the waiver continues to further the FCC's "longstanding goals; encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening competition among stations; and fostering a competitive UHF service."

- *Azteca International Corporation (Azteca America)*, DA 03-183 (MB May 27, 2003).

-recently granting a waiver of the rule on the same grounds as Univision and other Spanish-language networks, including the need to ensure a level playing field with other Spanish-language networks.

#### 5. Newspaper/Broadcast Cross-Ownership Prohibition

- *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, 50 FCC 2d 1046, ¶101 (1975).

-excluding foreign-language newspapers from the effect of the rule because "[t]heir situation would be different, for much of the audience of a station owned by such an entity would receive that entity's views for the first time."